

IN THE HIGH COURT OF JUSTICE, ACCRA HELD ON 23RD NOVEMBER 2023,
BEFORE HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS), HIGH COURT
JUDGE, SITTING IN DIVORCE AND MATRIMONIAL CAUSES DIVISION THREE.

SUIT NO: DM/0413/2017

MARTHA AMA AGBODZA - PETITIONER

VS.

EMMANUEL AGBODZA - RESPONDENT

JUDGMENT:

This is a husband's petition for dissolution of marriage. The Petitioner and Respondent are both Ghanaian citizens and domiciled in Ghana. The parties got married on 5th July, 1987 under the Marriage Ordinance (Cap 127) at the United Calvary Church at Achimota, Accra. After the said marriage the parties cohabited at Adenta and Osu R.E Accra. There are four issues of the marriage namely; Honesty Abla Agbodza aged 30 years, Bernard Kojo Agbodza aged 26 years, Susan Yawa Agbodza aged 22 years and Wisdom Yao Agbodza aged 18 years as at the time the Petition was filed.'

The Petitioner caused this Petition to issue on 8th November, 2017 on the ground that the marriage between the parties has broken down beyond reconciliation. He 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 23rd November, 2017 and filed an Answer and Cross-petition on 23rd November 2017.

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 on 10th October, 2023. In view of the Terms of Settlement filed, the Petitioner filed a Notice of Discontinuance in respect of the 2nd Respondent.

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. The evidence of Respondent is that the parties have not lived as husband and wife for a period of 7 years preceding the filing of the Petition. Petitioner testimony amongst others is that the Respondent deserted the matrimonial home on 14th December, 2010 and there has been no cohabitation for 7 years preceding the Petition. Prior to the Respondent's desertion, the Respondent led a flirtatious life and anytime the Petitioner complains it will lead to a quarrel. According to the Petitioner sometime in 2007 the Petitioner bought a quarter of a plot of land at Frafraha and with the assistance of her brother she put up a two bedroom house self-contained on it. When they were being ejected from their residence she took the Respondent to the site and requested him to complete the house by plastering and finishing it so that they could move in to avoid payment of rent advance to another landlord. According to petitioner the respondent took offence at this request and immediately deserted the

matrimonial home. The respondent accused the petitioner to be the cause of his sickness and reported the petitioner to Petitioner's clan chief.

All efforts by her family and church members to get the Respondent to attend a meeting to resolve their differences proved futile as he refused to attend the meeting. According to petitioner sometime in January, 2017 the 1st Respondent wedded the 2nd Respondent whilst the Petitioner's marriage to Respondent is still subsisting. This has caused petitioner emotional pain, anxiety and embarrassment. Petitioner's case is that the very act of the 1st Respondent marrying another woman has put their marriage beyond the limits of reconciliation. The Respondent has also stopped providing for her as a wife and she single handedly had to take care of the children and pay their school fees.

Respondent on the other hand testified amongst others about the unreasonable behavior of the Petitioner that she constructed a two bedroom house without his knowledge. Respondent said that he expressed displeasure over the attitude of the Petitioner for starting a building project of such magnitude without informing him. Respondent says that whilst he was away in Ivory Coast he remitted the Petitioner with substantial amount of money for her to acquire landed property for the family but nothing was done on the land as at the time he returned home. Petitioner took his opinion about her behavior lightly and took offence and told Respondent that she cannot live with him anymore and so he should look for his own place. This issue became serious and he was compelled to look for accommodation elsewhere and live there all alone whilst the children were living with the Petitioner. The Respondent testifies that this attitude of the Petitioner brought about misunderstanding, disagreements and eventual separation. The further testimony of the Respondent is that he fell very ill and after he recovered he asked the Petitioner to reconcile with him but Petitioner refused to do so.

It is obvious that the parties have not lived as husband and wife for seven years preceding this Petition and all attempts by family to reconcile them has proved futile.

By Section 2 (1)(e) and (f) 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 years immediately preceding the presentation of the Petition and also where parties are unable to reconcile their differences the marriage can be dissolved.

Upon the evidence adduced before the Court therefore, I find that parties have lived apart for seven years preceding the Petition and the marriage celebrated between the parties has broken down beyond reconciliation and all efforts to reconcile parties has proved futile. It is hereby decreed that, the marriage celebrated between the Petitioner and the Respondent on 5th July, 1987 in Accra, under the Marriages Act (CAP 127) be and is hereby dissolved forthwith. The Marriage Certificate is cancelled.

On 25th February, 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:

- i. That the marriage contracted between the parties has broken down beyond reconciliation.
- ii. That the 3-bedroom unnumbered house situate lying and being at Frafraha be settled on and in favour of the Petitioner.
- iii. No lumpsum compensation or financial provision shall be paid or made by either Petitioner or Respondent.

iv. That parties herein have agreed to bear their own costs in respect of this matter.

Parties wherefore pray that the above terms as have been agreed upon be adopted by the Honourable Court as Consent Judgment.

(SGD.)

ELFREDA AMY DANKYI (MRS)

JUSTICE OF THE HIGH COURT.

COUNSEL:

G. K. NTONY WITH EDWARD YAW UDZU FOR THE PETITIONER

RESPONDENT UNREPRESENTED