

IN THE HIGH COURT OF JUSTICE, ACCRA HELD ON 30TH OCTOBER 2023,
BEFORE HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS), HIGH
COURT JUDGE, SITTING IN DIVORCE AND MATRIMONIAL CAUSES
DIVISION THREE.

SUIT NO: DM/0097/2021

SALAMATU MOHAMMED - PETITIONER

VS.

TUNDE MOHAMMED - RESPONDENT

JUDGMENT:

This is a wife's petition for dissolution of the customary marriage celebrated between the parties in November 2001, after the marriage, the parties cohabited at Adabraka, Accra.

There are four (4) issues of the marriage; Abdul Hakeem Mohammed Anafi aged twenty-four (24) years, Abdul Maleek Mohammed Anafi aged twenty-two (22) years, Abdul Ganeel Mohammed Anafi aged twenty (20) years, Adigatu Mohammed Anafi aged sixteen (16) years as at the time that the petition was filed.

The Petitioner is a Ghanaian citizen and the Respondent is a Nigerian and both are ordinarily resident in Ghana.

The Petitioner says that the marriage has broken down beyond reconciliation and attributes it to the unreasonable behaviour on the part of the Respondent. The Petitioner says that the marriage has broken down beyond reconciliation is prays for the dissolution of the marriage between petitioner and the Respondent.

The said petition was duly served on the Respondent. The Respondent entered appearance to the Petition and filed an Answer. The Petitioner filed a Reply.

The pleadings in the suit having closed the evidence of the parties was heard on 26th July, 2023. When the Order was made to file the Petitioner filed a Witness Statement but the Respondent was unable to file a Witness statement. It is pertinent to point out that even though the parties were ordered to file Witness Statements the Court later on dispensed with the Witness statements at the trial.

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. Even though it is a customary marriage they are still bound by the provisions under the Matrimonial Cause Act. 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 proves 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.

The testimony of the Petitioner amongst others is that whenever the parties have any form of misunderstandings the Respondent physically abuses her and the last issue. The Respondent refused to pay for the school fees of the issues and as a result he sent them to go and learn a trade at Spintex and Madina. The Petitioner says she intervened and asked the Respondent to bring the children home but he still refused until the children called that they were involved in some misunderstanding at the workplace. According to the Petitioner, not long after the children returned home their examination results were published and she asked the Respondent for money to buy items for the children for school but he ignored her and she had to use her own money to purchase the school items. The Respondent was against the last issue going to secondary school

and as a result he physically abused her and suggested to her to go to an Islamic school instead. Her further testimony is that at a meeting between herself, Respondent and the Respondent's aunties the Respondent told his aunties that the petitioner had converted to Christianity which made the aunties verbally abuse her.

Respondent in his Answer denied the assertions of the Petitioner and contended that he maintains the children and pays their school fees. He averred that he gave money through his brother to be given to Petitioner to use for her trade and some to be used for the children. He asserts that the marriage has not broken down beyond reconciliation but however if Petitioner does not want the marriage he cannot force her to stay in it. He testified that attempts had been made by family to reconcile their differences but had proved futile.

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 Respondent and attempts at reconciliation has proved futile. Respondent also stated that there is the inability of parties to reconcile their differences.

By Section 2 (1) (f) of Act 367, where the parties have been unable to reconcile their differences after diligent effort, the Court may proceed to dissolve the marriage. As the parties have 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, I find that the marriage celebrated between the parties has broken down beyond reconciliation. It is hereby decreed that, the customary marriage celebrated between the Petitioner and the Respondent in November, 2001 at Chorkor, Accra, is hereby dissolved.

On 1st 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;

- i. The marriage celebrated by the Court in November, 2001 is dissolved.
 - ii. The Petitioner shall have custody of the last issue of the marriage, with reasonable access to the Respondent.
 - iii. The Respondent shall pay the school fees and all other educational expenses of the said child.
 - iv. The Respondent shall pay the medical bills of the said child when it falls due.
 - v. The Respondent shall provide an amount of three hundred Ghana Cedis (GH₵300.00) monthly for the maintenance of the said child
 - vi. The Petitioner shall also help in maintaining the house and the last issue
 - vii. The matrimonial home be given to all the children of the marriage
5. The parties agree and pray that the terms contained herein shall be adopted as consent judgment by Honourable Court.

(SGD.)

ELFREDA AMY DANKYI (MRS)
JUSTICE OF THE HIGH COURT

COUNSEL

LINDA ELIKAM MENSAH FOR THE PETITIONER PRESENT

COUNSEL FOR RESPONDENT ABSENT.