

IN THE HIGH COURT OF JUSTICE, ACCRA HELD ON 16TH NOVEMBER 2023,
BEFORE HER LADYSHIP JUSTICE ELFREDA AMY DANKYI (MRS), HIGH COURT
JUDGE, SITTING IN DIVORCE AND MATRIMONIAL CAUSES DIVISION THREE.

SUIT NO: DM/0177/2021

SEGUN STANLEY SYLVESTER - PETITIONER

VS.

SIMISOLA PATIENCE I. SYLVESTER - RESPONDENT

JUDGMENT:

This is a husband's petition for dissolution of marriage. The Petitioner and Respondent are both Nigerian citizens. Petitioner is resident in Ghana and the Respondent resident in Germany. The parties got married on 26th August, 2003 under the Marriage Ordinance (CAP 127) at the Accra Metropolitan Assembly, Accra. After the said marriage the parties cohabited at West Legon, Accra. There are four issues of the marriage namely; Emmanuel Segun Sylvester aged 24 years, Wisdom Fola Sylvester aged 21 years and Precious Funmilola Sylvester aged 19 years and Praise Boluwatife Sylvester aged 12 years as at the time that the petition was filed.

The Petitioner caused this petition to issue on 24th December, 2020, 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 26th May, 2021. The Respondent filed a Answer on 10th May, 2021.

The Petitioner filed a Reply. 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 by video link.

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 had 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 difference.”

Being a Matrimonial Cause, the Court is duty bound, regardless of the Terms of Settlement filed and in accordance with Section 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 has deserted the matrimonial home since January, 2016 and now lives permanently in Germany. Respondent had stated that she does not intend to live in Africa again.

The evidence of Respondent is that the parties have not lived as a man and wife for a period of 7 years. It is obvious that the parties have not lived as husband and wife for seven years preceding this petition.

By Section 2 (1)(e) of Act 367, 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.

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 decree 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 26th August, 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:

1. That the Terms of Settlement contained herein be adopted by this Court as Consent Judgment.
2. That the judgment be entered as follows:
 - i. Dissolution of the marriage contracted by the parties under the Marriage Ordinance (CAP 127) on the 28th September, 2003, at the Living Faith Church Worldwide be dissolved on the grounds that the marriage is has

broken down reconciliation. (A copy of the certificate of marriage is marked and attached as Exhibit A).

- ii. That the Petitioner's share in Balise International School, West Legon-Accra, Ghana, should be shared equally by our four (4) children; Emmanuel Segun Sylvester, Wisdom Fola Sylvester, Precious Funmilola Sylvester and Praise Boluwatife Sylvester.
- iii. That the Respondent be granted custody of Praise Boluwatife Sylvester, aged 14 with reasonable access to the Petitioner.
- iv. That this should be the final judgment of the court.

(SGD.)

ELFREDA AMY DANKYI (MRS.)

JUSTICE OF THE HIGH COURT.

COUNSEL:

DAME AWOONOR-WILLIAMS FOR THE PETITIONER

KWAME AMANKWAH FOR THE RESPONDENT