

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

SUIT NO: DM/0321/2022

THOMAS OWUSU-DANQUAH

- PETITIONER

VS.

THERESA OWUSU-DANQUAH

- RESPONDENT

JUDGMENT:

By his Petition filed in this Court, the Petitioner seeks a dissolution of the marriage celebrated between the parties sometime in 1974 at the Jehovah Witness Church Lartebiokoshie, Accra. Under the Marriages Act, 1884 – 1985 (CAP 127). After the marriage the parties cohabited at Lartebiokoshie, Dansoman and New Gbawe. The parties are Ghanaian citizens.

There are two issues of the marriage, namely Jack-Fynn Owusu Danquah aged forty-seven years, and Sandra Owusu Danquah aged forty years at the time the petition was filed.

The Petitioner states that the marriage has broken down beyond reconciliation and prays as follows;

- i. Dissolution of the marriage.

- ii. That the following properties settled in favour of the Respondent;
 - a. The matrimonial home adjacent Gilead School near Pentecost Vocational School, New Gbawe.
 - b. The Gilead School which has been converted into a commercial residential facility by the Respondent.
 - c. The Pharmacy Shop called Allidat Chemical shop located at New Russia, Dansoman which Petitioner solely acquired through inheritance.
- a. Each party bears its own costs and incidentals to the suit.

The Respondent who was served with the Petition, filed an Appearance, within the time required by the Rules of Court. The Respondent filed an Answer.

The pleadings having closed, the Petitioner applied to set the suit down for trial. This Court gave directions for filing of Witness Statements and for a Case Management Conference to be held. On the 10th October, 2022 the Respondent's Counsel filed a Notice of withdrawal to withdraw his services as Respondent has become uncooperative and directed that the Petitioner's Witness Statement and Pre-Trial Checklist be served personally on the Respondent henceforth.

Though the Petitioner filed his Witness Statement, the Respondent failed to file her Witness Statement and did not attend Case Management. The Case Management Conference was conducted on 27/4/23 and the suit adjourned to 5/6/23 trial. After a few adjournments trial commenced on the 21/7/23. The Respondent who was served with Hearing Notices outside the jurisdiction on numerous occasions failed to attend the trial.

The only issue for determination in this suit, is whether or not the marriage celebrated 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 proves one or more of the facts set out in the said section as follows:

(1) For 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.

The general position of the law is that, a Court ought to inquire so far as is reasonable, into the facts alleged by the Petitioner and Respondent, to satisfy itself on the evidence, that the marriage between the parties has broken down beyond reconciliation. This requirement is provided for by Sections 2 (2) and 2 (3) of Act 367, as follows:

“(2) On a Petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the Petitioner and the Respondent.

(3) although 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, on all the evidence that the marriage has broken down beyond reconciliation.”

Therefore, notwithstanding the fact that the Respondent did not attend the trial, the Petitioner must establish on his evidence that the marriage between the parties has indeed broken down beyond reconciliation, in accordance with Section 2 (1) of Act 367, *supra*.

The particulars of breakdown averred to by the Petitioner is the inability of the parties to reconcile their differences and that the parties have not lived as man and wife for a period of fifteen years preceding the petition and all attempts by family to reconcile them has proved futile.

The testimony of the Petitioner is that the marriage began to deteriorate sometime in 1998. Shortly after the establishment of their school, parties became increasingly incompatible and as a result he was compelled to withdraw from the management of the school in 2002 and completely withdrew from having anything to do with the

school in 2006. In 2006 the Respondent returned the drinks which were used for the customary rites to the Petitioner. Respondent has expressed her desire for the dissolution of the marriage. In 2014, Petitioner noticed that Respondent had converted the building which housed the school into commercial and residential facilities without his knowledge or approval and received rent from the facilities to the exclusion of the Petitioner.

The parties have after diligent effort, been unable to reconcile their differences.

The evidence of the Petitioner on the breakdown of the marriage was uncontroverted, thereby amounting to an admission of same. It is settled law that where evidence on oath is unchallenged, same amounts to an admission. See: **MANTEY & ANOR V. BOTWE [1989 – 90] 1 GLR 479; IN RE; ASHALLEY BOTWE LANDS; AGBOSU V. KOTEY [2003 – 2004] SCGLR 420 per WOOD JSC**. Therefore, as I have no reason to disbelieve the Petitioner's testimony, I accept same as being the facts pertaining to the marriage of the parties.

Upon the evidence adduced before the Court, I am satisfied that the parties have not lived as husband and wife for a period exceeding sixteen years preceding the commencement of this Petition. The Respondent who has been served with processes and has failed to attend this Court, has clearly evinced an intention not to contest the prayer for the dissolution of the marriage. I am satisfied that the parties have not lived together for a period of sixteen years preceding the petition. I am also satisfied that the parties have been unable to reconcile their differences. In the circumstances, this Court is entitled to dissolve the marriage between the parties, as having broken down beyond reconciliation, by virtue of Sections 2 (1) (d) and 2 (1) (f) of Act 367, supra.

Accordingly, it is hereby decreed, that the marriage celebrated between the Petitioner and Respondent sometime in 1974 in Accra, under the Marriages Act, (CAP 127) be

and is hereby dissolved forthwith. The Marriage Certificate is cancelled. The reliefs of the Petitioner in his petition is hereby granted.

There shall be no order as to Cost.

(SGD.)

ELFREDA AMY DANKYI (MRS)

JUSTICE OF THE HIGH COURT.

COUNSEL:

FOSUA AMAGYEI FOR THE PETITIONER ABSENT.

NO LEGAL REPRESENTATION FOR THE RESPONDENT