

**IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 18TH DAY
OF NOVEMBER, 2022, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO.C5/5/23

COMFORT AKOSUA ASILEVI	----	PETITIONER
VRS.		
MICHAEL KABU HARGO	----	RESPONDENT

PETITIONER	PRESENT
RESPONDENT	ABSENT
NO LEGAL REPRESENTATION	

JUDGMENT

FACTS

The parties herein got married under **Part III of the Marriages Act** (1884-1985), Cap 127, on 29th May, 2010 at the Divine Healers' Church, Tema Subsequent to that, the parties cohabited at Zenu. The petitioner is unemployed and the respondent is a driver. The petitioner states that there was a previous proceedings in respect of the marriage but was struck out by Registrar's summons.

On 18th August 2022, the petitioner filed the instant petition for divorce alleging that the marriage between herself and the respondent has broken down beyond reconciliation and prayed for the sole relief of the dissolution of the marriage.

The petitioner avers that for nine (9) years preceding the presentation of the petition for divorce, she and the respondent have been separated from each other since they are generally incompatible. The petitioner alleges that the

respondent has been untruthful to her from the onset of the marriage. The petitioner further alleges that the respondent has a violent disposition, subjects her to verbal abuse and physically assaults her over trivial matters. The petitioner further avers that the respondent is not trustworthy and does not involve her in any decision-making. The petitioner states further that the respondent took the keys to the matrimonial home from the Petitioner and caused the separation of the marriage for almost nine (9) years prior to the dissolution of their customary marriage.

According to the petitioner, on 22nd June, 2022, the respondent brought a piece of paper purporting to be an agreement to meeting with their families indicating his intention to officially bring the marriage to an end.

The petitioner says that the respondent has behaved unreasonably that she cannot continue to live with him as husband and wife and therefore the need for the dissolution of the marriage. According to the petitioner, all efforts by pastors, families and friends to resolve their differences have proved futile and that the marriage has broken down beyond reconciliation due to the respondent's behaviour.

All the processes were personally served on the respondent but he failed to enter appearance and to file an answer to the petition. The court granted leave to the petitioner to lead evidence to prove her claim.

LEGAL ISSUE

The sole issue for the consideration of the court is whether or not the marriage between the petitioner and the respondent has broken down beyond reconciliation.

ANALYSIS

Under the Matrimonial Causes Act, 1971 (Act 367), the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. See **Section 1** of the MCA. To succeed, a petitioner is required to prove one of the six (6) facts set out in section 2(1) of Act 367, namely, adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as man and wife for five years, irreconcilable differences. The petitioner in the instant petition has set out to prove fact 2(1) (e) namely. *"that she and the respondent have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition."*

In the case of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that it is imperative for the petitioner to plead and prove any of the six facts set out in the law to show that the marriage has broken down beyond reconciliation. The court further held that this obligation remains on the petitioner even when the petition is not contested.

The parties are also mandated to inform the court about all attempts made at reconciliation and the court shall refuse to grant a petition for divorce if there is a reasonable possibility for reconciliation. See Section 2(3) of the MCA and the case of **Adjete & Adjete** [1973] I GLR 216 at page 219.

The court is further enjoined to enquire into the circumstances alleged and to refuse to grant a petition for divorce if there is reasonable possibility of reconciliation.

To succeed under fact **2 (1)(e)**, all that the petitioner is required to prove is that for a continuous period of five years immediately preceding the

presentation of the petition for divorce, she and the respondent had not lived together as husband and wife.

The law does not require proof of any matrimonial offence and there is no need to establish blame. Proof of not having lived together as husband and wife for a continuous period of at least five (5) years coupled with the inability of the parties to effect reconciliation to resume cohabitation as husband and wife shall suffice.

I am fortified in this view by the case of **Kotei v. Kotei [1974] 2 GLR 172**, where a husband petitioned for divorce alleging that he and the respondent wife had not lived as husband and wife for six years, and that the marriage had broken down beyond reconciliation and should be dissolved. It was the petitioner's case that he had recognised and continued to recognise that the marriage was at an end and that he never intended to take back his wife. In resisting the petition, the respondent asserted that she still loved her husband, that she was still waiting for the husband to send for her and was willing to make attempts at reconciliation if the proceedings were adjourned for that purpose. The High Court per Sarkodie J, espousing on **section 2(1) (e)** of the MCA held that at pages 175-176

"Proof of five years' continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage".

The court further held at page 176 as follows;

"There must be a total breakdown of the consortium vitae. Mere physical separation is not sufficient; a petitioner has to prove not only the factum of separation but also that he or she has ceased to recognise the marriage as subsisting and intended never to return to the other spouse... Therefore it seems the state of mind of the parties needs to be considered, that is, whether they treated the marriage as at an end. It may not

matter whether the state of mind of one of the parties was not communicated to the other."

The uncontroverted evidence led by the petitioner is that they got married under the Marriage Ordinance Cap 127 at the Divine Healers' Church, Tema on the 29th May, 2010. According to her testimony, the respondent has put up a violent behaviour, physically assaults and verbally abuses her over trivial issues. According to the petitioner, the respondent has trust issues and does not involve her in decision-making as his wife. She went to church on one occasion and when she returned, the respondent took the keys to the matrimonial home from her and humiliated her publicly.

The petitioner further testified that once, after a misunderstanding between them, she went to live with her sister. Later, she was summoned to the respondent's family house for reconciliation and the family requested for her to return to her matrimonial home. Subsequently, the respondent came to her sister's house she informed him to take the lead to the matrimonial home and that she will follow suit. In the process, the respondent got annoyed and rained insults on her and her sister. According to her, based on the problems in the marriage, they have been separated for almost nine (9) years now. As a result, the petitioner maintains that the marriage celebrated between herself and the respondent has broken down beyond reconciliation.

From the evidence led by the petitioner, the fact that for nine years preceding the presentation of the petition for divorce the parties have not lived together as husband and wife is not controverted. The processes in the suit were personally served on the respondent but he failed to appear in court to defend the petition and to challenge the petitioner on her evidence. The petitioner need not prove that the respondent has committed any matrimonial offence.

All that is required of her is to prove that the parties have not lived together as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition. It can be gleaned from the testimony of the petitioner that there has been a complete cessation of the consortium between a husband and a wife and both parties have treated and continue to treat the marriage as at an end with no intention of reconciling their differences to resume cohabitation.

On the totality of the evidence led, I find that for nine years immediately preceding the presentation of the petition for divorce, the parties had not lived as husband and wife. Further to this, various attempts made at reconciling the differences of the parties have proved futile. Accordingly, I hold that the marriage between the petitioner and the respondent has broken down beyond reconciliation.

CONCLUSION

In conclusion, I hold that the marriage between the petitioner and the respondent has broken down beyond reconciliation for not having lived together as husband and wife for a continuous period of nine years immediately preceding the presentation of the petition for divorce. I accordingly enter judgment for the petitioner in the following terms;

1. I hereby grant a decree for the dissolution of the marriage celebrated between the petitioner and the respondent on 29th May, 2010 at the Divine Healer's Church.
2. The Registrar shall cancel the original copy of the marriage certificate number *DB2/T1/08/2010*.
3. No order as to costs.

(SGD)

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)