IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI-W/R HELD ON THURSDAY, 24TH NOVEMBER 2022 BEFORE
H/H NAA AMERLEY AKOWUAH (MRS.)

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C4/17/2022

DAPHNE ASHUN PETITIONER

v

KWAME MENSA RESPONDENT

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PETITIONER: PRESENT
RESPONDENT: ABSENT

C/PET.: VICTOR OWUSU, Esq.

C/RESP.: PHILIP BUCKMAN, Esq.

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JUDGMENT

The facts of this case are simple and straightforward; Petitioner wants a dissolution of her marriage to Respondent on grounds of the parties not living together as husband and wife for 5 years, unreasonable behavior and adultery on the part of the Respondent.

The particulars of the three grounds were that though the parties lived in the same house, they had not lived as husband and wife for the past 5 years to the point where effective communication has not existed for the same number of years. Petitioner pleaded that, in order to avoid communication with her, Respondent often left the house to work very early in the morning and returned quite late to when he knew she would not be awake. On the allegation of unreasonable behavior, Petitioner said Respondent had stopped showing love and affection to her and their child, used unsavory and insulting language towards her, physically assaulted her and has denied her sexual intercourse for the past 6 years because of his amorous relationship with one Emmanuella Aguiar, a nurse at the

Effia Nkwanta Regional Hospital. Based on these, it was Petitioner's strong conviction that she and Respondent could not continue to live together as husband and wife.

In his Answer, Respondent vehemently denied the allegations levelled against him save the averment that they had been separated for five years, insisting that the breakdown of the marriage was due to Petitioner's attitude but failed to plead, particularize or lead evidence in support of during hearing.

Due to the determining and conclusive effect of s. 2 (1) (e) of the Matrimonial Causes Act, 1971 (Act 367), I shall deal with this ground first, and based on my determination in that regard, perhaps discuss the other two grounds of unreasonable behavior and adultery.

S. 2(1) (e) of Act 367 provides that;

(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:

> *"(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"*

Under the provision above, proof of the parties living apart continuously for 5 years without more, entitles parties to the grant of a divorce. In ***Eugenia Atswei Yawson Adjei v Alberto Akuetteh Osasu [petition filed on 15/07/2016]*** the High Court granted a divorce decree on the finding that the parties had not lived together as husband and wife for six years, having cohabited for less than a few months together after the marriage celebration. In the *locus classicus* **Kotei v Kotei [1974]2 GLR 172,** Sarkodee J noted that;

> *"once the facts are proved bringing the case within any of the facts set out in s. 2(1) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the court's power. Once he or she comes within any one of the provisions in s. 2(1) (e) and*

> *(f), the presumption is in his favour; proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation. 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 … As the provision of the Act stands, it seems no blame need be attributed to either party and there may be no passing of any sort of moral judgment. There may be no need to label one or the other party as technically innocent even though the conduct of both has brought about the breakdown of the marriage"*

In the instant case, the marriage between the parties was contracted on 30/07/2011. At the time of filing the petition (12/1/2022), Petitioner pleaded that the eleven-year-old marriage had suffered more than five years of separation and a breakdown of communication between the parties. In paragraph 8 (i) & (ii) of the petition, Petitioner pleaded;

8. That the marriage between the parties have (sic) broken down beyond reconciliation, the particulars of which appear below:

(i) That the parties have not lived together as husband and wife for the past five (5) years

(ii) *That there has not been any effective communication between the parties as married couple for over five years now.*

She reiterated her pleading in paragraph 7 of her Witness Statement where she averred that *'the respondent and I ceased communicating with each other about five years ago even though we lived in the same house until recently. There was no consortium, we lived our separate lives'.*

Respondent not only unequivocally agreed that the marriage has broken down beyond reconciliation but also agreed with and admitted that he and Petitioner have been apart for more than five years since the inception of the marriage. In paragraphs 3 & 5 of his

Answer and Witness Statement, he admitted paragraph 8(i) & (ii) of the petition and reiterated his consent for the dissolution of the marriage.

The legal effect of Or. 23 rules 1&6 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) was exemplified in the case of ***Opoku & Ors. (No. 2) v Axes Co. Ltd. (No. 2) [2012]2 SCGLR 1214@1227*** per Gbadegbe JSC as follows;

> *"Once there has been such an unequivocal admission before a Court in respect of a claim or part thereof as was done in the case before us and not withdrawn there cannot in principle be any objection to a decision based thereon"*

In this case, in both his Pleadings and evidence before the Court, Respondent clearly admitted the averment of separation for 5 years prior to the presentation of the petition. As held ***Ewusie-Mensah v Ewusie-Mensah [1992]1GLR 271*** admissions upon which a party or Court may rely on for judgment should have been made either in Pleadings or in writing before the Court and under such circumstances a party need not lead evidence to support the fact/claim in issue same and a finding of fact could be made on same based on the admission. Reference ***In re Asere Stool; Nikoi Olai Amontai IV (Substituted by) Tafo Amon II vrs Akotia Owirsika III (substituted by) Laryea Ayiku III [2005-2006] SCGLR 637@656*** where it was held that there cannot be any better proof than an adversary admitting a fact in contention. See also the case of ***Okudzeto Ablakwa (No.2) v AG & Anor. [2012] 2SCGLR 845@867.*** With the satisfaction of substantive, procedural and case law on the fact of admission, I hold that s. 2(1) (e) of Act 367 has been proved. I am fortified in my finding above by the brevity of hearing when neither party cross examined the other after their evidence-in-chief despite having legal representation, further proof of the mutual agreement and understanding of the breakdown of the marriage bearing in mind the caution in s. 10 of Act 367 which empowers a court to dismiss a petition on grounds of collusion between the parties. In furtherance of the

amicable agreement to the dissolution of the marriage, the parties filed Terms of Settlement on 18/08/2022 which was adopted on 19/10/2022 and noted to form part of the eventual judgment of this Court.

Having determined the issue of the parties living apart for five years, I find it of no academic or decisive purpose to discuss the allegations of adultery and unreasonable behavior levelled against Respondent.

On the authorities cited above, I am convinced that the marriage between the parties has broken down beyond reconciliation. Being separated for five years is an obvious indication of the breakdown of a marriage and considering the human interactions required to sustain a marriage, I am in agreement with the wisdom of the framers of our laws that require no discretion on the part of a judge not to grant a decree of divorce where five years' living apart has been proved.

DECISION

On the foregoing, I hereby grant the petition for divorce dated 12/01/2022 on the finding that the marriage between the parties has broken down beyond reconciliation on the basis of s. 2 (1) (e) of Act 367.

On the authority of s. 42 (1) (b) of the Courts Act, 1993 (Act 459) I decree that the Ordinance Marriage between Daphne Ashun and Kwame Mensa celebrated on 30/07/2011 at the Offices of the Sekondi-Takoradi Metropolitan Assembly, Western Region is hereby dissolved.

TERMS OF SETTLEMENT

1. That the ordinance marriage celebrated between the parties on 30th July 2011 be dissolved

2. That custody of the only child of the marriage be granted to the Petitioner with the Respondent getting reasonable access to the child
3. That the Respondent shall provide for the school fees, health needs and other basic necessities for the upkeep of the child
4. That the Respondent shall pay maintenance of Five Hundred Ghana Cedis (GHC500) for the child
5. That the maintenance amount mentioned in paragraph 4 supra shall attract an upward adjustment of 10% annually
6. That there shall be no order as to costs

In accordance with the Alternative Dispute Resolution Act, 2010 (Act 798) the above adopted Terms of Settlement shall form part of this judgment and constitute orders of the court.

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H/H NAA AMERLEY AKOWUAH (MRS)