

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 20TH OCTOBER, 2022

SUIT NO. C5/53/22

BARBARA AMEYAW

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PETITIONER

VRS

ERIC AMEYAW

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RESPONDENT

JUDGMENT

The parties to this action celebrated their marriage under the ordinance on the 12th day of June, 2010. There are three issues of the marriage who are all minors between the ages of 11 and 7. In her petition presented to this Court on the 16th day of February, 2022, the petitioner averred that their marriage has broken down beyond reconciliation due to their irreconcilable differences. That they have both agreed to go their separate ways. She contended that the traditional drinks signifying the dissolution of the traditional marriage have been presented and she and the respondent no longer live together as husband and wife.

Petitioner prayed the court to dissolve their marriage, grant custody of the children to her with reasonable access to the respondent and also order respondent to pay an amount of five hundred Ghana cedis (Ghs 500) per child as maintenance and upkeep money. She further prayed for the respondent to be ordered to provide accommodation for her and the children, for respondent to continue paying school fees and any other orders that the court deems fit.

The respondent filed an answer and cross petition. He contended that he discovered the petitioner's infidelity with another person and out of shock, could not bear the

psychological trauma. That by the mere sight of the petitioner, he had health challenges like high blood pressure and so he decided to stay away from the matrimonial home. That his family met with the petitioner to try to reconcile their differences but the petitioner decided to move out of the matrimonial home and indeed moved out when there was a fire outbreak. He agreed with the petitioner that their marriage has broken down beyond reconciliation due to their irreconcilable differences and that it is best they go their separate ways.

He averred that the petitioner has benefited so much from his resources in his higher education and that he made those expenditures for the purposes of increasing the income of the matrimonial home. That he would no longer benefit from the expected income of the petitioner by reason of their divorce. That he maintains the children and his aged parents. He prayed the court to dissolve their marriage and cross petitioned for compensation from the petitioner, cost of defending and commencing this action and any other orders that the court may deem fit.

The parties settled the ancillary reliefs and filed terms of settlement on the 7th day of June, 2022, thus leaving the court to determine only one issue; whether or not their marriage has broken down beyond reconciliation.

CONSIDERATION BY COURT

- 1. Whether or not the marriage between the parties has broken down beyond reconciliation.***

Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. In the case of *Ameko v.*

Agbenu [2015] 91 G.M.J, the court of Appeal relying on the Supreme Court decision in the case of *Elaine Dorothy Ampiah v. Mr. Joseph Alex Ampiah (Civil Motion No J5/39/2011)* granted a certiorari to quash a decree of dissolution on the basis that same was not “**warranted by statutory rules of procedure**” as the trial judge had failed to take any evidence and granted the decree based upon the consent of the parties.

The court of Appeal in the **Ameko case (Supra)** held that “from the record of appeal, it is clear that no evidence was taken before the dissolution of the marriage in question. The judge did not make any enquiry and satisfy itself as required by *Section 2(2) and (3) of the Matrimonial Causes Act*.

Blacks’ law dictionary, (8th edition, 2004 p. 1449) defines divorce as “*the legal dissolution of a marriage by a Court.*” In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*.

In *Section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

It is he who asserts who bears the burden of proof and so the burden of persuasion lies on petitioner to lead cogent and positive evidence to establish the existence of her claim

in the mind of the court. See the case of *Takoradi Flour Mills v. Samir Paris* [2005-6] SCGLR 882 and *Ackah v. Pergah Transport Ltd* (2010) SCGLR 728. As the respondent has counterclaimed, he bears the same burden of proof in establishing his claim. See the case of *Messrs Van Kirksey & Associates v. Adjeso & Others* [2013-2015] 1 GLR 24.

The petitioner's basis for presenting this petition is that they have not been able to reconcile their differences. The respondent in his cross petition admits this. They both say that it is best that they go their separate ways and they have even commenced that process by currently living apart. In their evidence before the court, both parties testified that their marriage has broken down beyond reconciliation due to irreconcilable differences.

As the respondent admits the claim of the petitioner as to their irreconcilable differences, there is no need for either party to call any further evidence in proof of their claim. See the case of *In Re Asare Stool; Nikoi Olai Amontia IV v. Akortia Oworsika* [2005-6] SCGLR 637.

Again, at page 5 of the record of proceedings, the respondent in his evidence in chief said;

Q: *Can you confirm that the traditional marriage between the 2 of you has been dissolved by your respective families?*

A: *Yes my Lord. I can confirm that.*

Marriage is considered as a union not between just a man and a woman but also their families and for the families, it is the traditional marriage that signifies their union. The family are called upon in times when the marriage boat is sinking to help keep it safe and on its marital journey. Thus when the traditional marriage is dissolved, it is an indication that the marriage has broken down beyond reconciliation as the very persons

i.e the family whose consent aside that of the parties is necessary to sustain a union, by the dissolution had accepted that nothing could be done to salvage the union.

Thus although the parties had converted their marriage to the ordinance, the presence and relevance of the family cannot be underestimated. Their acceptance of the drink signaling the end of the marriage is an indication to all and sundry that the marriage boat has sunk to the very bottom of the sea and there is very little to do save to let the parties go their separate ways.

The anxiousness of both parties to live their lives as individuals rather than as a couple is evidenced by the fact that in this court, they have quickly settled the ancillary reliefs by way of the petition and cross petition and filed terms of settlement which they have both confirmed to the court after same was read and explained to them. They both appear to be resigned to the fact that their marriage did not work and appear to be in haste for the court to hammer in the final nail that would bury their legal union by way of a decree dissolving their union.

As Amisshah JA put it succinctly in his usual brilliant style in the case of *Knudsen v. Knudsen* [1976] 1 GLR 204, " if a man comes to court saying that his marriage has reached a stage that he "cannot reasonably be expected to live" with his wife any more, should a court say to him oh yes you can?". In the circumstances of this case, both the man and woman are not only in court saying they cannot reasonably be expected to live with each other but have taken steps prior to coming to court to cease living together as husband and wife.

That is why *Section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367) provides that;*

“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; that the parties to the marriage have, after diligent effort, been unable to reconcile their differences”.

On that basis, I hereby find that the marriage celebrated between the parties on the 12th day of June, 2010 at **Lartebiokoshie.....** has broken down beyond reconciliation. I accordingly issue a decree to dissolve the marriage. The marriage certificate evidencing the celebration of their marriage is hereby cancelled. Let the terms of settlement filed on the 7th day of June, 2022 at 2:07pm be and same is hereby adopted as consent judgment. The usual default clause applies.

(SGD)

**H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)**

MICHAEL OWUSU AWUAH FOR THE PETITIONER