IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 28TH DAY OF APRIL, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO.C5/47/23

ROY NANA WILLIAMS	**-----**	**PETITIONER**
VRS.		
HAWA DIAKA FOFANA	**-----**	**RESPONDENT**

PETITIONER	**PRESENT**
RESPONDENT	**ABSENT**

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner filed the instant petition for divorce on 28th November, 2022, pursuant to leave granted by the court praying this court for the sole relief of the dissolution of the Ordinance Marriage celebrated between himself and the respondent on the 26th day of October, 2014.

The facts are that the petitioner, a Ghanaian citizen got married to the respondent a British citizen resident in London on 26th October, 2014 at the Tema Metropolitan Assembly. The marriage is blessed with two children namely; Yazmeen Barikisu Williams, aged six (6) years and Shaquille Gassim Williams, aged two (2) years at the time of filing the instant petition for divorce. The petitioner alleges that the respondent has behaved in such a way that he cannot reasonably be expected to live with her as his wife. The petitioner states that there is a total lack of commitment on the part of the

respondent and further states that the respondent has deserted him. The petitioner further states that all efforts made by families and friends to resolve their differences have proved futile. Additionally, the petitioner contends that he has totally lost interest, trust and confidence in the marriage and cannot reasonably be expected to wait for the respondent who has ceased to recognize their marriage as subsisting. The petitioner therefore maintains that the marriage celebrated between himself and the respondent has broken down beyond reconciliation and ought to be dissolved.

All the processes in the suit were served on the respondent outside the jurisdiction but she failed to enter appearance to contest the petition or to participate in the proceedings. The court therefore granted leave to the petitioner to lead evidence to prove that the marriage celebrated between himself and the respondent has indeed broken down beyond reconciliation.

LEGAL ISSUE

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

ANALYSIS

Under **section 1** of 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. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the 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 and irreconcilable differences**.** In the case

of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that:

"The Matrimonial Causes Act, 1971 (Act 367), does not permit spouses married under the Marriage Ordinance… to come to court and pray for the dissolution of their marriage just for the asking. The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act for the purpose of showing that the marriage has broken down beyond reconciliation. Section 2(3), which is pertinent, provides that even if the court finds the existence of one or more of those facts it shall not grant a petition for divorce unless it is satisfied that the marriage has broken down beyond reconciliation…the petitioner is under a duty not only to plead any one or more of those facts in section 2(1) of the Act but he must also prove them. Equally the court is under a statutory and positive duty to inquire so far as it reasonably can, into the charges and counter-charges alleged. In discharging the onus on the petitioner, it is immaterial that the respondent has not contested the petition, she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage has irretrievably broken down."

To encourage reconciliation as far as may be practicable, **section 8** enjoins the petitioner to inform the court of all attempts made to effect reconciliation. A court shall also refuse to grant a petition for divorce notwithstanding the fact that a petitioner has proved any of the facts set out in **section 2(1)**, if there is a reasonable possibility for reconciliation.

The petitioner in the instant petition set out to prove that irreconcilable differences exist between the parties and that the parties after diligent efforts have not been able to reconcile their differences within the meaning and intendment of **Section 2(1)(f)** of Act 367 which states that:

"For the purposes of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the Court…that the parties after diligent effort have been unable to reconcile their differences."

To succeed under **Section 2(1)(f)**, there must be evidence that irreconcilable difference exists between the parties within the meaning and intendment of **section 2(1) (f)** of the Matrimonial Causes Act, 1972(Act 367). In the case of **Mensah v. Mensah** [1972] 2 GLR 198 -209 @ 206, the court held that for **Section 2(1) (f)** to apply, the following elements must be present;

"(a) there should exist differences between the parties.

(b) they should have made diligent efforts to reconcile these differences, and

(c) they should have been unable to effect the reconciliation of the differences."

The court further held at page 207 of the report that:

"The section does not require that there should be disputes between the parties; it only requires that there should be differences…Secondly, the differences must be between the parties… Thirdly, the differences should be such as would make it impossible for the marriage to subsist…Differences which cannot possibly affect the subsistence of the marriage are not sufficient. Evidence of petty quarrels and minor bickerings which are but evidence of that frailty which all humanity is heir to is not sufficient. The differences must be real and not imaginary; they should be so deep as to make it impossible for the parties to continue a normal marital relationship with each other."

The petitioner testified on oath that after the celebration of their marriage, they did cohabite in Ghana since the respondent lives in London. According to the petitioner, they lived in London together and he came to Ghana in the year 2014 to resolve a few issues with the intention to return to London. However, due to other pressing issues that he was confronted with on his visit to Ghana, he spent more time than he had anticipated. Within this

period, he made sure that the respondent visited frequently and it was during her visit to Ghana that they had their first child Yazmeen Barikisu Williams in June 2016. Since then, he made it possible for them to visit him in Ghana twice a year. After that, the respondent's family put pressure on him to cohabit with the respondent. The respondent's family also requested him to be a devoted Muslim since the respondent is a practicing Muslim. Also, due to the differences in their faith, after celebrating their Ordinance Marriage in Ghana, they went through an Islamic marriage ceremony in Guinea where the respondent originally comes from. Consequently, the respondent's family expected him to practice the Islamic faith which is not possible due to his belief in the Christian religion.

The petitioner further testified that in December 2021, the respondent visited him in Ghana with the children to inform him that her parents wanted the marriage dissolved in Guinea since he was not practicing the Islamic faith. According to him, he had practiced Islam for some time but it did not work for him. According to him, initially, due to high prices in flight fares, especially when they had two children, he asked the respondent to relocate to Ghana until they were all ready to return to England but she refused saying that if she has to live in Africa, she would rather live in her own country which is Guinea and not Ghana. The petitioner further testified that he had established businesses in Ghana and he did not deem it prudent to relocate to Guinea where he had no source of income.

Additionally, the petitioner testified that though they have lived separately throughout the marriage, he has always supported his family through bank transfers by sending at least £500 pounds every two months which was reduced to £300 pounds due to COVID- 19 pandemic with the hope that the amount would increase when circumstances change. The petitioner further

states that he plans to visit the children once or twice a year since the respondent is not willing to give him custody and denies friends and family members that he sends to check on the well-being of the children access to the children. According to him, he shall continue to be fully responsible for the upkeep of the children and trusts the respondent to take good care of them in London.

The notice of the petition for divorce and subsequent processes were served on the respondent at her United Kingdom address through DHL courier service but she failed to enter appearance and to file an answer to contest the divorce petition and to claim ancillary reliefs if any. The effect of such boycott of proceedings by a party is amplified in the case of **Ghana Consolidated Diamonds Ltd. v. Tantco and Ors** [2001-2002] 2 GLR 150, the court held in its holding 4 that:

"A party who was aware of the hearing of a case but chose to stay away out of his own decision could not, if the judgment went against him, complain that he was not given a hearing. He could only appeal on the merits of the judgment. Accordingly, since the defendants chose not to take any further part in the proceedings after their stay of proceedings had been refused and the trial court went on with the action and entered judgment for the plaintiffs, the defendant could not complain that they had been denied a hearing."

The cumulative effect of the decision of the respondent not to appear to contest the petition for divorce is that the evidence of the petitioner that serious religious differences exist between the parties and the parties after diligent efforts have not been able to reconcile their differences remain uncontroverted. In the case of **Mensah v. Mensah** [1972] 2 GLR 198, the court held in its holding 1 that:

"Under Act 367, s. 2(2) the court has to inquire into the facts alleged by the parties. However, the court does not have to hold such inquest in all cases. Where the evidence of a petitioner stands uncontradicted an inquest is not necessary unless it is suspected that the evidence is false or the true position is being hidden from the court."

In the instant case, the evidence in support of the allegation that the marriage has broken down beyond reconciliation remains uncontradicted which makes it unnecessary for the court to inquire further into the circumstances alleged. The court has no reason to doubt the testimony of the petitioner who has sworn on oath to tell the truth in the absence of evidence to the contrary. The insouciance of the respondent to the divorce proceedings is also evidenced by the fact that although fully aware of the court proceedings evidenced by the proof of service of the processes on her outside the jurisdiction, she has not shown any interest in salvaging the marriage by defending the petition for divorce. The conduct of the respondent is indicative of the fact that she has ceased to recognize the marriage as subsisting and does not intend to cohabit with the petitioner as man and wife. Consequently, I hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation on account of irreconcilable differences. I accordingly grant the petition for divorce and decree for the dissolution of the Ordinance Marriage celebrated between the parties.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and enter judgment for the petitioner in the following terms;

1. I hereby grant a decree for the dissolution of the Ordinance Marriage celebrated between the petitioner and the respondent on 24th October, 2014 at the Tema Metropolitan Assembly, Tema.
2. The Registrar of the court shall cancel the original copy of the Marriage Certificate number *ROM/901/2014.*
3. There shall be no order as to costs.

H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)