

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 24TH DAY
OF FEBRUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO.C5/20/23

D/CPL. MICHAEL TETTEH AHULU ---- PETITIONER

VRS.

D/CPL. ABIGAIL ENYONAM TUPRAH ---- RESPONDENT

PETITIONER	PRESENT
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RESPONDENT	ABSENT
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SOLOMON AKROFI BOYE BOISON, ESQ. FOR THE PETITIONER	PRESENT
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JUDGMENT

FACTS:

The parties herein, both police officers, lawfully married under **Part III of the Marriages Act (1884-1985)** in the Presbyterian Church of Ghana Ramseyer Congregation at Adum Kumasi on the 1st day of August 2015. Thereafter, the parties cohabited in Kumasi. The marriage is blessed with two children by name Michaela Ewenam Dede Tetteh and Marie Louis Korkor Tetteh aged four years and two years respectively. The petitioner filed the instant petition for divorce on 27th September, 2022 alleging that the marriage between himself and the respondent had broken down beyond reconciliation and prayed the court for the following reliefs;

- a. That the marriage celebrated in fact between the parties be dissolved.

- b. That custody of the two children of the marriage be given to the respondent with unrestrained access to the petitioner including spending school holidays with the petitioner.
- c. That both petitioner and the respondent be made to contribute equally towards the upkeep of the issues of the marriage.
- d. That each party bear their respective costs of the litigation.

The petitioner avers that the marriage between the petitioner and the respondent has completely broken down since the respondent has engaged in adulterous relationships with other men. The petitioner alleges that the behaviour of the respondent has caused untold mental, and emotional and psychological torture to him. The petitioner says that he now finds it intolerable to live as husband and wife with the respondent. The particulars of adultery alleged are that the petitioner has been engaging other men in amorous relationships both physically and on phone. According to the petitioner, unknown to respondent, he was monitoring her sexual relationships with other men. Consequently, the marriage contracted between himself and the respondent has broken down beyond reconciliation.

The petition, notice to appear and notice to set down for trial were duly served personally on the respondent but she failed to file an answer to enter appearance and to file an answer to the petitioner. The case proceeded to trial for the petitioner to lead evidence to prove his case.

LEGAL ISSUE

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 or her counsel, to inform the court of all attempts made to effect reconciliation. A court shall refuse to grant a petition for divorce notwithstanding the fact that a petitioner has proved any of the facts in **section 2(1)**, if there is a reasonable possibility for reconciliation.

In the case of **Adjetey v. Adjetey** [1973] 1GLR 216, the court held in its holding 2 that:

“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough.”

The petitioner in the instant petition alleges that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. The petitioner basis this on an alleged adultery committed by the respondent. Thus, it is incumbent on the petitioner not only to plead adultery, but also to lead admissible and cogent evidence to prove that the respondent has committed adultery and by reason of the adultery, she finds it intolerable to live with him.

Adultery is defined under **section 43** of Act 367 as follow:

“the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse.”

In the case of **Adjetey v. Adjetey** [1973] GLR 216-221; in holding 1, the court stated the standard of proof for adultery in the following terms:

“adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability. Direct evidence of adultery was rare. In nearly every case the fact of adultery was inferred from circumstances which by fair and necessary inference would lead to that conclusion. There must be proof of disposition and opportunity for committing adultery, but the conjunction of strong inclination with evidence of opportunity would not lead to an irrebuttable presumption that adultery

had been committed, and likewise the court was not bound to infer adultery from evidence of opportunity alone."

The petitioner gave evidence that he got married to the respondent on the 1st day of August 2015 at the Presbyterian Church of Ghana Ramseyer Congregation at Adum in Kumasi. The petitioner states that the respondent has been living an adulterous lifestyle which caused the said marriage to break down beyond reconciliation. In support, the petitioner tendered in evidence **Exhibit "A"** series which are screenshots of some of the WhatsApp chats between the respondent and some of her adulterous partners in proof of the allegation of adultery. He therefore prayed the court to dissolve the marriage based on the said adultery committed by the petitioner.

The allegation of adultery being a civil breach in Ghana, the burden of proof on the petitioner is to satisfy the court on a preponderance of probability only. The text messages are conversations with one Kpodo Kingsley with the respondent and the said man in the chats professing their love for each other and how they miss and want to spend time with each other. The sexually explicit communication between the respondent, a married woman and another man has not been disproved by the respondent. The respondent was served personally with the petition for divorce and all processes in the suit but has failed to appear in court to contest the petition for divorce and more importantly to deny that allegation of adultery levelled against her by the petitioner.

Adultery need not be established by a direct fact. From the content of the messages with the respondent asking how far the said man is prepared to take her in the relationship, and professing her love to him telling him how much she misses him and warning him to stop playing with her heart, in the

absence of a contrary evidence on the import of the messages, a court can reasonably infer the fact of adultery from it. The petitioner also states that as a result of the adultery, he finds it intolerable to live with the respondent hence the filing of the petition for divorce. There is no evidence that after discovering the adultery the petitioner has lived with the respondent since the petitioner lives in Kumasi and the respondent lives in Tema.

The petitioner is not contesting custody of the two children of the marriage but prays for unrestrained access. I therefore grant custody of the two children of the marriage namely; Michaela Ewenam Dede Tetteh, aged 4 years and Marie Louis Tetteh, aged two years to the respondent with reasonable access to the petitioner. The children shall spend weekends with the petitioner every fortnight with and half of their vacation period with the petitioner.

It is the joint responsibility of the parents to contribute towards the maintenance of their children. The respondent's failure to attend the trial to challenge the petitioner on the issue of maintenance has disabled the court from making specific orders regarding same. Accordingly, the parties shall continue to maintain the children of the marriage and provide them with the necessities of life.

CONCLUSION

In conclusion, I hold that the marriage contracted between the petitioner and the respondent has broken down beyond reconciliation. I therefore 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 1st August,

2015 at the Presbyterian Church of Ghana Ramseyer Congregation, Adum Kumasi.

2. The petitioner shall present the original copy of the marriage certificate No *RMC/10/2015* for cancellation by the Registrar of the court.
3. I hereby grant custody of the two children of the marriage namely; Michaela Ewenam Dede Tetteh aged 4 years and Marie Louis Tetteh aged two years to the respondent with reasonable access to the petitioner. The children shall spend weekends with the petitioner every fortnight and half of their vacation period with the petitioner.
4. The parties shall jointly contribute towards the maintenance of the children and provide them with the necessities of life.
5. No order as to costs.

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