

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 3RD DAY
OF FEBRUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO.C5/27/23

LEONARD KPAKPO ALLOTEY ----- PETITIONER

VRS.

MIMI PAASEWE ----- RESPONDENT

PARTIES

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The petitioner issued the instant petition for divorce on 14th October, 2022, pursuant to leave granted by the court on 7th October 2022 to issue divorce petition notice of which will be served outside the jurisdiction. In the petition for divorce, the petitioner, a pastor and a Ghanaian avers that he got married to the respondent, a security officer and an American citizen under **Part III of the Marriages Act, (1884-1985) Cap 127** on 18th March, 2020 at the Tema Metropolitan Assembly. The petitioner alleges that the marriage celebrated between himself and the respondent has broken down beyond reconciliation and prayed the court for the sole relief of the dissolution of the marriage.

The petitioner claims that the respondent has behaved in such a way that he cannot reasonably be expected to live with her as man and wife. According to the petitioner, after the marriage, the respondent left the shores of Ghana and has not returned for two years now and she has ceased communication with him. Also, there is a total lack of effective communication and desertion on

the part of the respondent. The respondent called on phone to tell the petitioner that she is no longer interested in the marriage so the petitioner can go ahead and marry another woman. The respondent started talking about the dissolution of their marriage a year prior to the filing of the instant petition for divorce but the petitioner did not give it much attention.

The petitioner further avers that he has totally lost interest, trust and confidence in the marriage and cannot be reasonably expected to wait in vain for the respondent who does not believe in the existence of the marriage. There have not been any sexual intimacies between the parties for two years now. The petitioner further states that all efforts made by family and friends to reconcile them have proved futile. Consequently, the marriage celebrated between them has broken down beyond reconciliation. The petitioner prayed the court for the sole relief of the dissolution of the marriage.

LEGAL ISSUE

Whether or not the marriage celebrated between the parties 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 set out in **section 2(1)**, if there is a reasonable possibility for reconciliation.

The petitioner testified that he got married to the respondent on 18th March, 2020. Thereafter, they cohabited at Community 3, Tema. After cohabiting with the respondent for three (3) months, she left Ghana to the United States of America where she is ordinarily resident. With time, they had a misunderstanding over the continuous stay of the respondent in the United States of America and she stated that she would come to Ghana. Later, she wanted to assist him to travel to join her abroad but she failed to do so. She then informed him that she was no longer interested in the marriage. He

contacted his family members, pastors and other revered ministers of the gospel to speak to the respondent between the year 2020 and 2022 but she did not renege on her decision not to continue in the marriage.

The petitioner further states that he made all the necessary attempts to resolve the issue with her but the family members of the respondent have not been responsive. The petitioner therefore prays the court to grant him the dissolution of the marriage to enable him restructure his life.

The notice of the petition for divorce and subsequent processes were served on the respondent at her United States of America address through DHL courier service but she failed to enter appearance and to file an answer to contest the divorce petition. 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 suit is that the evidence of the petitioner that the respondent totally forgot about their marriage when she returned to overseas and ceased all forms of communication with him remain uncontroverted. Similarly, the evidence that she communicated via phone her intention not to continue in the marriage and that the various attempts made by pastors and friends to

reconcile them have proved futile is also not controverted. 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 a contrary evidence. The disinterest of the respondent in the marriage 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 this young marriage. The conduct of the respondent is indicative of the fact that she has ceased to recognize the marriage as subsisting. Consequently, I hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

CONCLUSION

In conclusion, I hold that the ordinance 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 marriage celebrated between the petitioner and the respondent on 18th March, 2020 at the Tema Metropolitan Assembly.

2. The petitioner shall present the original copy of the marriage certificate No. *ROM/146/2020* for cancellation by the Registrar of the Court.
3. No Order as to costs.

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