

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 2ND DAY
OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO.C5/43/23

DOMINIC ARMANDO GAWUGA ----- PETITIONER

VRS.

REJOICE ADZO DZIKUNOO ----- RESPONDENT

PETITIONER/ATTORNEY

PRESENT

RESPONDENT

ABSENT

EDITH AWUKU-ASABRE, ESQ. FOR THE PETITIONER PRESENT

JUDGMENT

FACTS:

The petitioner filed the instant petition for divorce on 22nd November, 2022 pursuant to leave granted by the court on 18th November, 2022 alleging that the Ordinance Marriage celebrated between himself and the respondent has broken down beyond reconciliation and prays the court for the dissolution of the marriage contracted on the 10th of September, 2021.

The petitioner avers that he is a Ghanaian resident in the United States of America, in the state of New York and the respondent lives at Abeka Lapaz, Accra and is a business woman. According to the petitioner that after the marriage, they cohabited at Tema New Town until the petitioner travelled to the United States of America and there is no issue between the parties. The petitioner asserts that initially when he travelled outside the jurisdiction, the parties were communicating frequently and he was remitting the respondent. However, the marital relationship between them turned sour and the

respondent expressed a desire through messages to him of her disinterest in the marriage. According to the petitioner, all attempts to resolve their differences have failed and that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

The respondent was personally served with the petition for divorce but she failed to enter appearance and to file an answer to the petition for divorce. Also, the notice of setting down for trial, and the notice for trial as well as hearing notices were served on the respondent but she failed to appear to defend the petition for divorce. The court therefore granted leave to the petitioner to lead evidence to prove his case.

LEGAL ISSUE

The sole issue for the consideration of the court is whether or not the marriage has broken down beyond reconciliation.

ANALYSIS

Section 1 of the **Matrimonial Causes Act, 1971 (Act 367)**, provides that 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 (6) facts set out in **Section 2(1) of Act 367**, i.e., adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as husband and wife for five years and irreconcilable differences. Further to that, a court hearing a petition for divorce is enjoined to enquire into the facts alleged by the parties to establish the breakdown of the marriage. Additionally, a court shall refuse to grant a divorce petition where the circumstances disclose a reasonable possibility for reconciliation. In that regard, **Section 8** of Act 367 enjoins a petitioner or his counsel to inform the

court about the various efforts made to reconcile the parties and the court may adjourn proceedings for the parties to attempt settlement of their differences. In the erudite judgment of Osei-Hwere J (as he then was) in the case of **Donkor v. Donkor** [1982-83] GLR 1158 High Court, Accra, the Court held that:

“... The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act, not only by pleading them but also by proof for the purpose of showing that the marriage had broken down beyond reconciliation. Section 2 (3) of the Act, provided that even if the court found the existence of one or more of those facts it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation. Equally the court was under a statutory and positive duty to inquire so far as it reasonably could, into the charges and counter charges alleged...”

The obligation on a petitioner to prove any of the facts to establish the breakdown of the marriage on a balance of probabilities is not lightened by reason only of the failure of a respondent to attend the trial to defend the petition. In the instant case, the petitioner relies on the fact that irreconcilable differences exist between himself and the respondent which has made it impossible to continue living as man and wife within the meaning and intendment of **Section 2(1)(f)** of Act 367. The petitioner in the instant petition, set out to prove fact 2(1)(f) namely; *that the parties have after diligent effort 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, 1971(Act 367). In **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,

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

To prove that the marriage has broken down beyond reconciliation, the petitioner testified through his lawful attorney who testified and tendered in evidence the stamped Power of Attorney admitted and marked as **Exhibit A**. According to the petitioner's attorney, after the marriage, things did not work between the parties and the petitioner, who is his brother expressed interest to dissolve the marriage. Based on that, he contacted counsel who took instructions from his brother and that he maintains the marriage celebrated between the parties has broken down beyond reconciliation.

The evidence of the petitioner's attorney that the respondent exhibited certain unreasonable behaviours in the marriage which resulted in the inability of the parties to reconcile their differences have not been controverted by the respondent who was personally served with the processes in the suit but failed to participate in the trial to challenge the evidence led by the petitioner's attorney. The decision of the respondent not to take part in the proceedings when she was duly notified is an indication that she no longer has any interest in salvaging the marriage and she sees the marriage as at an end.

Based on the uncontested evidence led in the case, 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.

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 Ordinance marriage celebrated between the petitioner and the respondent on 10th September, 2021 at the Principal Registrar of Marriages Office at Accra.
2. The petitioner shall present the original copy of the marriage certificate for cancellation by the Registrar of the court.
3. No Order as to costs.

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